

ESTATE OF HELEN FISHER PARKER : Order Denying Reconsideration  
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: Docket No. IBIA 94-51  
:  
: July 11, 1995

The Board issued a decision in this appeal on April 5, 1995. 27 IBIA 271. On July 6, 1995, the Board received an apparent petition for reconsideration. The petition is in the form of a July 3, 1995, letter from counsel for appellees Henry and Doris Parker to Administrative Law Judge Richard L. Reeh. The letter was telefaxed to the Board by Judge Reeh. It states:

I have recently been contacted by my clients in [this] case regarding footnotes No. 9 and 10 on page 278 of the Final Opinion and am writing to request your assistance to clarify this matter. Apparently Judge Vogt was unaware of the correspondence in your file from the Office of Hearings and Appeals that they were unable to transcribe the tapes of the Probate Hearing. Judge Taylor initially presided over this case before his retirement and after your appointment [you] had to rule upon the Appeal that was filed.

It would have been impossible for you to make a ruling in this case without a transcript of the testimony Judge Taylor received and the rulings he made. A copy of the hearing tapes were [sic] provided to me only after the reporter or stenographer from the Office of Hearings and Appeals notified your office that they could not transcribe the tapes.

I hope that Judge Vogt will amend that portion of her ruling as the expense was only incurred due to the inability of the Department of the Interior to provide you with a record of testimony received at a hearing that you did not preside over. Any assistance you can provide will be appreciated.

Under 43 CFR 4.315(a), petitions for reconsideration of Board decisions must be "[f]iled with the Board within 30 days from the date of the decision." Counsel's letter was filed with Judge Reeh, rather than the Board, and is exceedingly untimely. Moreover, counsel failed to serve the letter on the other parties to the appeal, as required by 43 CFR 4.310(b). Accordingly, this petition must be denied for failure to comply with these regulatory requirements. Even if the petition had been timely and properly filed, however, the Board would deny it.

Counsel evidently seeks reconsideration of the Board's reversal of that portion of Judge Reeh's decision which allowed a claim against the estate for the preparation of a hearing transcript. 1/ Contrary to counsel's allegation, the Board was well aware of the statement in the record that the Arlington office of the Office of Hearings and Appeals was unable to prepare a transcript in this case. In fact, this statement appeared in Judge Reeh's September 23, 1993, Order Approving Will. The statement was not addressed in the Board's decision because it was not relevant to the Board's holding. Under Office of Hearings and Appeals procedures, the Arlington office serves only as a backup in the preparation of hearing transcripts. It is the responsibility of Judge Reeh's staff to prepare transcripts of hearings conducted by Judge Reeh and his predecessors, and it is Judge Reeh's responsibility to see that transcripts are prepared when they are necessary.

Counsel appears to object to footnotes 9 and 10 of the Board's decision. Footnote 9 simply states that hearing transcripts are not required in all cases and cites the regulatory provisions supporting the statement. In footnote 10, the Board referred counsel to the Director of the Office of Hearings and Appeals to make arrangements for resolution of this matter. It is not clear why counsel has not pursued this opportunity. However, the Director's office reports that counsel has not yet contacted that office. Counsel is advised that, if he wishes to resolve this matter, he must do so through a request to the Director.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this petition for reconsideration is denied.

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Anita Vogt  
Administrative Judge

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Kathryn A. Lynn  
Chief Administrative Judge

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1/ Counsel appears to be representing his own interests here rather than those of his clients. Indeed, his position appears to be adverse to the interests of his clients. Because of its disposition of this matter, the Board need not address the question of whether a petition for reconsideration is properly filed under these circumstances.